

## BOARD OF ZONING APPEALS MEETING

TIPP CITY, MIAMI COUNTY, OHIO

August 20, 2008

<b>Meeting</b>	Mr. Poff called this meeting of the Tipp City Board of Zoning Appeals to order at 7:30 p.m.
<b>Roll Call</b>	Roll call showed the following Board Members present: Ron Poff, Stacy Wall, Katelyn Black, and David Berrett. Others in attendance: City Planner/Zoning Administrator Matthew Spring, and Board Secretary Kimberly Patterson.
<b>Oath of Office</b>	Mrs. Patterson, notary administered the Oath Office to new Board Member Katelyn Black.
<b>Absence</b>	<p>Chairman Poff <b>moved to excuse Mr. Borchers from the meeting</b>, seconded by Mr. Berrett and unanimously approved.</p> <p>Citizens attending the meeting: Johnny Vance, Devon Beattie, Katherine Persinger, Patricia Bowlin, Linda Black, John Kessler, Matt Black, and Ron Siney. Ron Siney Jr. was present and did not sign the registry.</p>
<b>Board Minutes 7-16-08</b>	Chairman Poff asked for discussion. There being none, Chairman Poff <b>moved to approve the July 16, 2007, meeting minutes as written</b> , seconded by Mr. Berrett. <b>Motion carried.</b> Ayes: Poff, Berrett, and Wall. Nays: None. Ms. Black abstained from the vote.
<b>Chairman's Introduction</b>	Chairman Poff explained the guidelines and procedures for the meeting and public hearings. He advised the applicants that a decision of the Board could be appealed to City Council within 10 days. If the Board granted the applicant's request, the applicant may file the appropriate permits after the 10-day waiting period has expired.
<b>Citizen Comments</b>	There were no citizen comments on items not on the agenda.
<b>Administration of Oath</b>	Mrs. Patterson, notary, swore in citizens wishing to speak and Mr. Spring.
<b>New Business Case No. 17-08 Siney Jr. Two Variance Requests</b>	<p><b>New Business</b></p> <p><b>A. Case No. 17-08: Ronald Siney Jr. - 365 W. Kessler-Cowlesville Road - Lot: Inlot 2462</b> – The applicant requested two variances.</p> <p><u>Variance 1</u></p> <p>A variance of six feet (6') to Code §154.061(l) to allow an access drive within a residential district to maintain a setback of zero feet (0') from the eastern property line, rather than the required 6 feet (6').</p> <p><u>Variance 2</u></p> <p>A variance of 520 square feet to the maximum gross floor area for an</p>

accessory structure for storage incidental to a principal permitted residential use noted in Code §154.059(A)(2).

**Present Zoning District:** R-1B – Suburban Residential Zoning District

**Zoning Code Section(s):** §154.059(A)(2) and §154.061(I)

Mr. Spring stated that the applicant requested two (2) variances in association with the construction of a proposed 1,200 square foot storage area/garage and required hard-surfaced driveway/access drive at the single-family residence located at 365 W. Kessler-Cowlesville Road.

#### Variance 1

A variance of six feet (6') to Code §154.061(I) to allow an access drive within a residential district to maintain a setback of zero feet (0') from the eastern property line, rather than the required 6 feet (6').

Mr. Spring noted that the applicant proposed the construction of a hard-surfaced driveway (access drive) expansion from the existing concrete driveway to the proposed detached accessory structure (storage area/garage). The access drive would project easterly from the existing driveway and be zero feet (0') from the eastern property line for ±74 linear feet. Code §154.061(I) states:

*Access drives within residential districts shall maintain a minimum setback distance of 6 feet from adjacent properties.*

The proposed access drive was zero feet (0') from the eastern property line, therefore a variance to Code §154.061(I) of six feet (6') was required ( $6 - 0 = 6$ ).

#### Variance 2

A variance of 520 square feet to the maximum gross floor area for an accessory structure for storage incidental to a principal permitted residential use noted in Code §154.059(A)(2).

Mr. Spring noted that the structure in question was a 30' x 30' (900 sq. ft.) storage area/garage with an additional 10' x 30' (300 sq. ft.) covered patio on the western façade, thus the structure footprint was 1,200 square feet. Code §154.059(A)(1)(a) indicates that private garages or carports for single-family dwellings shall not exceed 800 square feet. Precedence indicated that the area of private garages or carports was calculated by multiplying the width of the garage door by the length of the garage. The proposed storage area/garage would contain a 16' wide garage door. Therefore, the area of the garage portion of the storage area/garage was 480 square feet ( $16 \times 30 = 480$ ). Thus the remaining area of the storage area/garage was deemed storage area, and must meet the requirements of Code §154.059(A)(2), which states:

(A) *Permitted accessory uses (Residential Districts). The following accessory uses are permitted in each Residential District.*

(2) *A structure for storage incidental to a permitted use,*

*provided no such structure that is accessory to a residential building, shall exceed 200 square feet in gross floor area.*

Mr. Spring stated that the applicant proposed a storage area/garage with a total gross floor area (footprint) of 1200 square feet. The garage portion of the storage area/garage was 480 square feet, therefore the storage area of the proposed structure was 720 square feet ( $1200 - 480 = 720$ ). Thus a variance to §154.059(A)(2) of 520 square feet was required ( $720 - 200 = 520$ ).

Mr. Spring explained the procedural requirements to grant the variance in this case as outlined in Sections §154.175(E)(1)&(9) §154.175(C) and §154.175(D) of the Tipp City Code of Ordinances.

Mr. Spring mentioned the following additional notes regarding the case:

- Per §154.074(l)(3)(b), all open off-street parking areas shall be graded and provided with a hard surface of bituminous or Portland cement concrete. The applicant had indicated that the proposed driveway and existing gravel driveway will be paved with a hard surface of bituminous (asphalt).
- There are no easements of record for the property
- The property contained an existing garage with a garage door of 14' width and a length of 22.2 feet. Therefore, the existing garage was 310.8 square feet in area ( $14 \times 22.2 = 310.8$ ). Thus the existing plus the proposed garage contain a total area within the requirements of Code §154.059(A)(1)(a), which indicated that private garages or carports for single-family dwellings shall not exceed 800 square feet ( $310.8$  (existing) +  $480$  (proposed) =  $790.8 < 800$ ).
- Prior to the construction of the proposed storage area/garage, the applicant shall be required to obtain an approved Zoning Compliance Permit from the City of Tipp City and the required building permits from Miami County.

Mr. Ron Siney Jr., 365 W. Kessler-Cowlesville Road, approached the dais.

Board Members found the following regarding the case: placing the garage in the rear of the lot eliminated dead space that would be behind the structure; contractor to perform the work; has lived at the residence for three years; an existing fence was located on the property line; has two personal vehicles and motorcycle that would be stored and off of street; parents currently living there which added additional vehicles which added to the need for additional off street parking and storage; resident would not conduct business in proposed garage; the home was built while in the township before annexed to the city limits; Mr. Siney was willing to work with the Board and would consider variations to his requests.

Board Members agreed to amend variance request one and to

change the request from 6' to 4' to allow a 2' grass area between the hard surface and the fence to avoid possible drainage runoff issues.

Mrs. Patterson stated there were no neighbors comments received.

Chairman Poff asked for further discussion. There was none.

Variance 1

Mr. Berrett moved to grant a variance of four feet (4') to Code §154.061(I) to allow an access drive within a residential district to maintain a setback of two feet (2') from the eastern property line, rather than the required 6 feet (6'), seconded by Mr. Poff. Motion carried. Berrett, Poff, Wall, and Black. Nays: None.

Variance 2

Mr. Berrett moved to grant a variance of 520 square feet to the maximum gross floor area for an accessory structure for storage incidental to a principal permitted residential use noted in Code §154.059(A)(2), seconded by Ms. Black. Motion carried. Ayes: Berrett, Black, Poff, and Wall. Nays: None.

**Case No. 18-08  
Aristocrat for  
Hochwalt  
Setback Variance  
Request**

**B. Case No. 18-08: Johnny Vance, Aristocrat for Gerald Hochwalt, owner - 675 Thornburg Place - Lot: Inlot 2353** – The applicant requested a variance of 15' to the required rear yard setback of 30' noted in Code §154.045(C)(2)(b)(1).

**Present Zoning District:** R-3 – Urban Residential Zoning District

**Zoning Code Section(s):** §154.045(C)(2)(b)(1)

Mr. Spring stated that the applicant requested a variance of 15' to the required rear yard setback of 30' noted in Code §154.045(C)(2)(b)(1) in conjunction with the construction of an attached patio cover located at 675 Thornburg Place (a two-family dwelling). If approved, the accessory structure would be 15' from the western (rear) property line.

Code §154.045(C)(2)(b)(1) indicates:

*(b) Minimum rear yard depth.*

*1. Two-family dwellings: 30 feet.*

Mr. Spring explained the procedural requirements to grant the variance in this case as outlined in Sections §154.175(E)(1)&(9) §154.175(C) and §154.175(D) of the Tipp City Code of Ordinances.

Mr. Spring mentioned the following additional notes regarding the case:

- The proposed patio cover would be 12' x 9' (108 sq. ft.)
- The proposed patio cover was constructed without an approved Zoning Compliance Permit and/or the necessary variance.
- The variance was requested after a drive by inspection noted the ongoing (virtually completed) construction. A subsequent site visit by the Zoning Administrator allowed the completion of the patio cover (only one support needed to be installed for completion), with the understanding that a Zoning Compliance

Permit and a possible variance would be needed to be applied for.

- If the requested variance was granted, the applicant will be required to obtain the required Zoning Compliance Permit and pay the associated fee of \$40.

Mr. Johnny Vance, Aristocrat for Gerald Hochwalt, owner – 675 Thornburg Place approached the dais. Mr. Vance apologized and stated that there was miscommunication internally at Aristocrat that led Mr. Vance to believe that the permits had been obtained prior to installation and took full responsibility.

Board Members found the following regarding the case: Patio installed July 9<sup>th</sup>, 2008; the house encroached into the current 30' rear yard setback and that the patio cover could not be placed anywhere to accommodate that regulation.

Mrs. Patterson stated there were no neighbor's comments received regarding this case.

Chairman Poff asked for further discussion. There being none, Mrs. Wall **moved to grant a variance of 15' to the required rear yard setback of 30' noted in Code §154.045(C)(2)(b)(1) in conjunction with the construction of an attached patio cover located at 675 Thornburg Place,** seconded by Mr. Berrett. **Motion carried.** Ayes: Wall, Berrett, Poff, and Black. Nays: None.

**Case No. 19-08  
Persinger  
Two Variance  
Requests**

**C. Case No. 19-08: Katherine Persinger - 311 W. Plum Street - Lot: Pt. IL 231** – The applicant requested two variances.

Variance 1

A variance of 2" to the required setback of 3' noted in Code §154.059(D)(6), which requires detached accessory structures to be setback a minimum of 3' from all lot lines.

Variance 2

A variance of 7' 1" to the required setback of 10' noted in Code §154.059(D)(4), which requires all accessory structures to be setback a minimum of 10' from the primary dwelling.

Present Zoning District: R-2 – Urban Residential Zoning District

Zoning Code Section(s): §154.059(D)(4) & §154.059(D)(6)

Mr. Spring stated that the applicant requested the following variances:

Variance 1

A variance of 2" to the required setback of 3' noted in Code §154.059(D)(6) in conjunction with the construction of an accessory structure (shed) located at 311 W. Plum Street. If approved, the accessory structure would be 2' 10" from the northern property line.

Code §154.059(D)(6) indicates:

*A detached accessory building shall be at least 3 feet*



from all lot lines.

Variance 2

A variance of 7' 1" to the required setback of 10' noted in Code §154.059(D)(4) in conjunction with the construction of an accessory structure (shed) located at 311 W. Plum Street. If approved, the accessory structure would be 2' 11" from the primary dwelling.

Code §154.059(D)(4) indicates:

*A detached accessory building shall be at least 10 feet from any dwelling situated on the same lot.*

Mr. Spring explained the procedural requirements to grant the variances in this case as outlined in Sections §154.175(E)(1)&(9) §154.175(C) and §154.175(D) of the Tipp City Code of Ordinances.

Mr. Spring mentioned the following additional notes regarding the case:

- The proposed shed would be 12' x 16' (192 sq. ft.)
- The proposed shed was partially completed, with construction halted until the Board of Zoning Appeals had ruled on their variance requests
- The variance was requested after a staff site visit prompted by a complaint filed with the City by a neighbor indicating the construction of a shed without the required permits
- If the requested variances were granted, the applicant would be required to obtain the required Zoning Compliance Permit and pay the associated fee of \$40.

Mr. Spring stated that there was a peculiarity in the code and some discrepancy in what the Board might see in photographs provided by Ms. Black and the site plan provided by the applicant.

Mr. Spring noted that the applicant's site plan indicated that there was 2' 11" between the proposed shed and the existing home. Mr. Spring believed that the measurement was based on the facing wall of the home and the facing wall of the shed. Unfortunately the 2' 11" measurement did not take into account the existing overhang and gutter of the home, nor the overhang of the shed. When the overhangs are taken into consideration of the measurement the Board would find that the two roofs actually overlap which was shown in the photographs taken by Ms. Black. Mr. Spring stated that there was not a specific definition on how to measure the setback from a rear accessory structure. It could be inferred by Zoning Code Section 154.061(H)(1) *that chimney's, flue's, sills, pilasters, cornices, eaves, gutters and other similar features may project into a required side or rear yard a maximum of 18 inches.* Mr. Spring noted that based on this particular section of code, if an overhang and gutter is projecting into a rear yard then that would mean that the rear yard was actually measured by the facing wall. Theoretically that was half of the equation and there was no reference as to how measure the overhang of the shed itself, although

normally it would be measured to include everything that was under roof as part of the overall structure as had been done in the past.

Katherine Persinger, 311 W. Plum Street, approached the dais.

Board Members found the following regarding the case: Mrs. Persinger had lived at the residence for the last four years; applicant stated that she had probably received the Home Improvement Permits and Guidelines brochure that comes with the utility bill once a year; applicant agreed that construction on the shed was started without any required permits; residence does not have an exit route in back of building; concerns with the main structure overhang catching fire from the shed, Board Members suggested the applicant contact the fire department; property owner building the shed; shed was being built on a wood foundation; shed would be used for storage of property owner's collectables; no gate in fence near the shed in the case where someone would become trapped in space between house and shed during a fire.

Ms. Black noticed while inspecting the lot that there was an additional lot next to the garage and driveway that was fenced in and asked if that was part of Mrs. Persinger's property. Mrs. Persinger stated that it was. Ms. Black asked the applicant why the shed was not placed on the vacant lot on the other side of the garage. Mrs. Persinger stated that would have been too far away from the house to use and that having the shed where it was now was easier access to her house.

Chairman Poff asked Mrs. Persinger if there was any other location on her property that the shed could be located other than the proposed location. Mrs. Persinger stated there was not another location because of the convenience of taking items from the house to the shed.

Chairman Poff asked Mrs. Persinger if she had room to place the shed on the opposite side of the lot. Mrs. Persinger stated no.

Chairman Poff asked Mrs. Persinger if she had considered making the shed smaller. Mrs. Persinger stated no.

Mrs. Wall inquired if the variance request originated from a complaint from a neighbor. Mr. Spring stated yes. Mrs. Wall asked if Staff had heard any follow-up from the original complaint. Mr. Spring stated that Staff did receive a few neighbor's comments.

Mr. Spring read the following neighbor's comments for the record:

August 12, 2008 1:55 p.m.

Email from Ellen Cotterman:

*"Dear Mr. Spring, Thank you for your notification of the code violation at the property next door to mine at 313 West Plum Street. I believe that the property code is for everyone and as a multiple property owner in*

Tipp City for 30 years, I have adhered to the property code in several instances whether or not I agreed with it.

In this case the owner, at 313 Plum Street, has already built the building that the variance addresses. I am firmly against granting this variance. The owner did not ask for a building permit to erect this structure. The building is out of scale for the other buildings on site. The variance asked for is almost 4/5ths over the allowable use. Historically there has been a lack of interest by the property owner in the appearance of the neighborhood, There seem to be various piles of "stuff" around most of the time that detract from the pleasant sidewalk scene. In addition, the property owner seems to be raising dogs on the property coded and adds an undesirable building to a quaint Tipp City neighborhood.

Sincerely, Ellen Cotterman"

August 15, 2008 9:30 a.m.

Mrs. Patterson received a phone call from Mr. Paul Burger:

"Mr. Paul Burger, 312 W. Plum Street, called today 8/15/08 regarding 313 W. Plum Street. His comment was to take the shed down. He Stated that he planned on attending the meeting. Thank you."

August 19, 2008 11:53 a.m.

Email from Mr. Paul Burger was received:

"Matt, consider this. How often does the City of Tipp mail out the "Amber Colored-Multi Fold" Do's and Don't information circular. I believe it states clearly, when in doubt, call and inquire. Per one of my phone calls to you and your office, addressing the "Garbage" can in the front of their property that they leave open and dump live waste into, that adjoins their front porch with the lid open-is another violation of city ordinance. It is spelled out clearly in this handy dandy little guide for residents. Do us both a favor, before you rule on this variance, physically drive by this property, and see if in fact you would like the mess across the street from 312 Plum Street in your line of vision everyday of your life. It is flat dead trashy. The City of Tipp has a complete file on the cosmetics of these neighbors in their current address and their activity in the other lot they own two doors west of 311. Check your records. I am not the one that called in this time, but I have addressed the Garbage can issue with you and you expressed a non-knowledge point of view. Well, please visit the properties in question, tomorrow at lunch time, allowing the garbage can to be back in its resting place, observe the general state of disarray of junk on the front porch, and remember one thing, they have not complied with any city ordinances and elect not to. As evidenced by the Construction of the Eyesore in their back yard. Totally against all public and private ordinances. Ignorance is not a scapegoat here, it is their preference to not abide by the rule book. Sir, what is good for one is good for all. Clean up, properly store the trash contained, and remove the illegal construction with 30 days. You might also want to consult with the "Fire Department" in the variance decision, I believe the code was also designed to prevent flames from jumping from home to home in the event of a fire. Just thought I would mention it....thank you so much. Paul Burger"



Chairman Poff reminded the Board and the Citizens that the items mentioned in the neighbors comments addressed other issues and that the Board Members were only concerned with the variance requests for the applicant.

Chairman Poff asked Mrs. Persinger if the Board was willing to work with her if she would be willing to possibly make the shed smaller, or move to another location on the property or re-locate the shed further away from the house. Mrs. Persinger stated that the shed came in a kit and there was no other spot on the property to place the shed. Mrs. Persinger stated that her house was too small and that was why she needed the shed.

Mr. Spring stated that he did contact Fire Chief Steve Kessler, whom was out of town at a seminar, and specifically inquired about the distance between the structures. Mr. Spring noted that Chief Kessler did not have the code in front of him but to the best of his knowledge there were no specific fire regulations regarding the proximity between a shed and a home at all unless the structures were to contain explosive or hazardous substances.

Chairman Poff asked for further discussion.

Variance 1

Ms. Black **moved to deny a variance of 2" to the required setback of 3' noted in Code §154.059(D)(6) in conjunction with the construction of an accessory structure (shed) located at 311 W. Plum Street**, seconded by Mrs. Wall. **Motion carried.** Ayes: Black, Wall, and Poff. Nays: Berrett.

Variance 2

Mrs. Wall stated that she believed that Zoning Code Section §154.175(C)(3) could not be satisfied by granting the variance. Therefore, Mrs. Wall **moved to deny a variance of 7' 1" to the required setback of 10' noted in Code §154.059(D)(4) in conjunction with the construction of an accessory structure (shed) located at 311 W. Plum Street**, seconded by Ms. Black. **Motion carried.** Ayes: Wall, Black, Poff, and Berrett. Nays: None.

Chairman Poff stated that both requests did fail and that the only recourse was to file an appeal to City Council and advised to stop construction on the shed until after the case was heard by City Council.

Mr. Spring mentioned that he wanted to make sure that Mrs. Persinger understood. Mr. Spring stated to Mrs. Persinger that the Board of Zoning Appeals had denied the variance requests, and at this point without further appeal of the case the shed would have to be removed or changed to come into compliance with the current Zoning Code. Mr. Spring noted that she had the option of appealing this denial to the City Council. If she would like to appeal the decision there was no additional charge to do so, but would need written notification within the next ten

days. Mr. Spring asked Mrs. Persinger if she understood. Mrs. Persinger nodded her head yes. Mr. Spring also noted that the written notification could be as simple as one sentence written out on a piece of paper and essentially would need to be delivered to the same desk where she applied for the variance. Mr. Spring mentioned again that would need to be done within ten days if she would like to appeal the case.

**Old Business**

There was none.

**Miscellaneous**

There was none.

**Adjournment**

There being no further business, Mrs. Wall **moved to adjourn the meeting**, seconded by Mr. Berrett and unanimously approved. **Motion carried.** Chairman Poff declared the meeting adjourned at 8:34 p.m.



Chairman Ron Poff

Attest:   
Mrs. Kimberly Patterson, Board Secretary